

BEFORE THE COMMISSIONER OF THE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE OF ALASKA

In the matter of:)
)
Request for an Adjudicatory Hearing by Trustees)
For Alaska Regarding DEC's § 401 Certification,)
Dated October 20, 2011, In Connection With)
NPDES Permit No. AKG-31-5000)
_____)

ORDER ON REQUEST FOR AN ADJUDICATORY HEARING

On November 21, 2011, Trustees for Alaska, acting on behalf of Cook Inletkeeper, the Native Village of Port Graham, the Native Village of Nanwalek, the United Cook Inlet Drift Association, and the Cook Inlet Fisherman's Fund (collectively, "Cook Inletkeeper"), filed a Request for an Adjudicatory Hearing regarding the Department's 401 Certification of NPDES Permit No. AKG-31-5000 (the "Permit") for Oil and Gas Extraction Facilities in Federal and State Waters in Cook Inlet. The Request presented a sole legal issue—whether the Department's July 14, 2010, *Interim Antidegradation Implementation Methods* qualified as a "regulation" under the Alaska Administrative Procedure Act.

On February 2, 2012, I stayed the request by Cook Inletkeeper for an adjudicatory hearing because of pending litigation before the Alaska Superior Court in *Alaska Center for the Environment v. State, Department of Environmental Conservation*, No. 3AN-11-7159 CI. That case also raised the issue of whether the Interim Methods qualified as a regulation. I indicated in my stay order that upon a final decision in the Superior Court case, I would enter an order either lifting the stay, or directing the parties to submit statements as to how this matter should proceed.

On September 4, 2012, the Superior Court ruled on cross-motions for summary judgment. It found that the Interim methods did not qualify as a regulation and were properly adopted as guidance. Final judgment in the Superior Court action has been entered, and the time for an appeal has expired without an appeal having been filed.

On January 22, 2013, Cook Inletkeeper filed a Voluntary Dismissal of its Request for an Adjudicatory Hearing pursuant to 2 AAC 64.230(a). That regulation provides that:

At any time before the issuance of a proposed decision, a party who requested an administrative hearing may, without the consent of the other parties, voluntarily dismiss the case by providing written notice, or oral notice on the record during a prehearing conference or hearing, of the dismissal.

As the Superior Court has issued a decision resolving the sole legal issue presented in this request, I find that there is no longer reason for a stay of this matter, and hereby order that the stay previously imposed be lifted. Furthermore, as Cook Inletkeeper has filed a Voluntary Dismissal of its Request for an Adjudicatory Hearing, I hereby order that the Request be dismissed. The file on this matter is hereby ordered closed.

IT IS SO ORDERED.

Dated: January 24, 2013


Larry Hartig, Commissioner

The undersigned certifies that on January 25, 2013, this order was distributed by U.S. mail to the following:

- (1) XTO Energy
- (2) Hilcorp Alaska, LLC
- (3) Conoco Phillips Alaska
- (4) Alaska Oil and Gas Association
- (5) Cook Inletkeeper
- (6) Native Village of Port Graham
- (7) Native Village of Nonwaleck
- (8) United Cook Inlet Drift Association
- (9) Cook Inlet Fisherman's Fund
- (10) DEC Division of Water
- (11) EPA Region 10



Gary Mendivil
Environmental Program Specialist